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MAA Credit Bhd v Alam Pahlawan Sdn Bhd

B

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24FC-1377–09 OF 2024
SU TIANG JOO J
15 MAY 2025

C

Land Law — Charge — Order for sale — Cause to the contrary — Application for order for sale of land via public auction to satisfy monies allegedly owing to plaintiff under charge — Computation of interest pursuant to s 17(1) of the Moneylenders Act 1950 — Whether statutory demand in Form 16D demanded sums not lawfully due from charge — Whether to grant order for sale would be contrary to some rule of law namely s 17(1) of the Moneylenders Act 1951 which amounted to cause to the contrary — Moneylenders Act 1951 s 17(1) — National Land Code ss 254(1), 256(3) & 257

D

Moneylenders — Interest — Computation — Computation of interest pursuant to s 17(1) of Moneylenders Act 1951 — Moneylender continued to impose 10% interest after cut-off date — Whether imposition of interest after cut-off date in contravention with s 17(1) of Moneylenders Act 1951

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Pursuant to a moneylending agreement dated 13 July 2021 ('the moneylending agreement'), the plaintiff as a licensed moneylender under the Moneylenders Act 1951 ('Act 400') had given a loan amounting to RM24.5m to Best Birdsnest Sdn Bhd ('the principal borrower'). As a security for the said loan, the defendant had given a third party first legal charge ('the said charge') over its land in Kuala Lumpur ('the said land'). When the principal borrower defaulted in the payment of the said loan, the plaintiff filed Suit 183 against the principal borrower. Suit 183 ended in favour of the plaintiff and pending appeal before the Court of Appeal. In addition to Suit 183, the plaintiff filed the present originating summons ('encl 1') against the defendant (as the third party chargor) pursuant to ss 256 and 257 of the National Land Code ('the NLC') seeking an order for the sale of the said land via public auction to satisfy monies allegedly owing to the plaintiff under the said charge and various other consequential reliefs. In response, the defendant filed encl 5 to strike out encl 1. In opposing encl 1, the defendant's position was that the statutory demand made in Form 16D pursuant to s 254(1) of the NLC (specifically, with respect to the plaintiff's computation of the amount owing) was in contravention of s 17(1) of Act 400 and, that this amounted to cause to the contrary pursuant to s 256(3) of the NLC so as to disentitle the plaintiff to an order for sale.

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Held, dismissing encl 1 with costs with liberty to the plaintiff to apply afresh premised upon the computation of the amount owing in compliance with the provisions of Act 400, striking out encl 5, and awarding costs of RM12,000 subject to allocatur to be paid by the plaintiff to the defendant:

(1) Act 400 was a special and specific Act of Parliament to regulate and control the business of moneylending not only for the protection of borrowers but also matters connected therewith. It contained six Parts with Part V containing specific provisions on the Conduct of Moneylending Business including a specific provision housed in s 17 which made it illegal for any moneylending agreement to provide directly or indirectly for the payment of compound interest. In the court's considered view, the phrase 'matters connected therewith' as stated in the preamble of Act 400 was wide enough to cover the dispute in the present action on the calculation of interest payable under the said charge created in favour of the plaintiff to secure a moneylending loan in the present action (see paras 42–43).

(2) Clause 2 of the moneylending agreement read together with s 17(1) of the Act 400, made it clear that the cut-off date for the imposition of the interest at 10%pa on the principal sum or loan with a tenure of five months, was 16 December 2021. However, in contravention of the explicit provision of s 17(1) of the Act 400, and cl 2 of the moneylending agreement, the plaintiff continued to charge interest at 10% pa on the principal sum after 16 December 2021 and continuing (see para 47).

(3) The court found that, firstly, the provisions of the statutory formula for the computation of interest was clearly provided in s 17(1) of the Act 400 and it had to be complied with. Secondly, the interest of 10% for the five months earned by the plaintiff had been capitalised, and the default interest of 8%pa accrued on the increased sum owing. Thirdly, to allow the 10%pa interest to continue to accrue plus a default interest of 8% pa being levied would result in the defendant being charged interest in excess of what the plaintiff was entitled to in contravention of the statutory formula provided in s 17(1) of the Act 400. Lastly, but by no means the least, Act 400 was a socially beneficent piece of legislation to keep in check usury and if there was any ambiguity in the construction of s 17(1) of the Act 400, it had to be construed in favour of the borrowers and by extension the defendant who had given a security for the loan taken by the principal borrower, in keeping with the preamble of Act 400. To put it another way, to protect those Act 400 was meant to protect (see para 49).

(4) It followed that the defendant had proved that to grant an order for sale would be contrary to some rule of law namely Act 400, and in particular, s 17(1) of the Act 400 which amounted to cause to the contrary under

s 256(3) of the NLC. By computing interest in the manner it had, in law, the defendant had proved there was in existence cause to the contrary under two of the three categories laid down in *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77, namely: (a) that the statutory demand in Form 16D demanded sums not lawfully due from the charge; and (b) to grant an order for sale would be contrary to some rule of law namely Act 400, and in particular, s 17(1) the of Act 400 (see para 53).

[Bahasa Malaysia summary

Menurut perjanjian pinjaman wang bertarikh 13 Julai 2021 ('perjanjian pinjaman wang tersebut'), plaintif sebagai pemberi pinjaman wang berlesen di bawah Akta Pemberi Pinjam Wang 1951 ('Akta 400') telah memberikan pinjaman berjumlah RM24.5 juta kepada Best Birdsnest Sdn Bhd ('peminjam utama'). Sebagai cagaran untuk pinjaman tersebut, defendan telah memberikan gadaian undang-undang pertama pihak ketiga ('gadaian tersebut') ke atas tanahnya di Kuala Lumpur ('tanah tersebut'). Apabila peminjam utama ingkar dalam pembayaran pinjaman tersebut, plaintif memfailkan Saman 183 terhadap peminjam utama. Saman 183 berakhir memihak kepada plaintif dan menunggu rayuan di hadapan Mahkamah Rayuan. Selain Saman 183, plaintif memfailkan saman pemula semasa ('lampiran 1') terhadap defendan (sebagai penggadai pihak ketiga) menurut ss 256 dan 257 Kanun Tanah Negara ('KTN') bagi memohon perintah penjualan tanah tersebut melalui lelongan awam untuk menjelaskan wang yang didakwa terhutang kepada plaintif di bawah gadaian tersebut dan pelbagai relif berbangkit yang lain. Sebagai tindak balas, defendan memfailkan lampiran 5 untuk membatalkan lampiran 1. Dalam menentang lampiran 1, pendirian defendan adalah bahawa tuntutan berkanun yang dibuat dalam Borang 16D menurut s 254(1) KTN (khususnya, berkenaan dengan pengiraan plaintif tentang jumlah yang terhutang) adalah melanggar s 17(1) Akta 400 dan, ini berjumlah kepada sebab-sebab bertentangan menurut s 256(3) KTN yang menyebabkan plaintif tidak layak mendapat perintah penjualan.

Diputuskan, menolak lampiran 1 dengan kos dengan kebebasan kepada plaintif untuk memohon semula berdasarkan pengiraan jumlah yang terhutang mengikut peruntukan Akta 400, membatalkan lampiran 5, dan memberikan kos sebanyak RM12,000 tertakluk kepada alokatur yang perlu dibayar oleh plaintif kepada defendan:

(1) Akta 400 merupakan Akta Parlimen yang khas dan khusus untuk mengawal selia dan mengawal perniagaan pinjaman wang bukan sahaja untuk perlindungan peminjam tetapi juga perkara-perkara yang berkaitan dengannya. Ia mengandungi enam Bahagian dengan Bahagian V yang mengandungi peruntukan khusus mengenai 'Conduct of Moneylending Business' termasuk peruntukan khusus yang termaktub dalam s 17 yang menjadikannya menyalahi undang-undang

bagi mana-mana perjanjian pinjaman wang untuk menyediakan secara langsung atau tidak langsung bagi pembayaran faedah berganda. Pada pandangan mahkamah, frasa 'perkara-perkara yang berkaitan dengannya' seperti yang dinyatakan dalam mukadimah Akta 400 adalah cukup luas untuk merangkumi pertikaian dalam tindakan semasa mengenai pengiraan faedah yang perlu dibayar di bawah gadaian tersebut yang diwujudkan bagi kepentingan plaintif untuk mendapatkan pinjaman wang dalam tindakan semasa (lihat perenggan 42–43).

(2) Klausa 2 perjanjian pinjaman wang tersebut yang dibaca bersama s 17(1) Akta 400, menjelaskan bahawa tarikh akhir untuk pengenaan faedah pada kadar 10% setahun ke atas jumlah prinsipal atau pinjaman dengan tempoh lima bulan, adalah pada 16 Disember 2021. Walau bagaimanapun, dengan melanggar peruntukan eksplisit s 17(1) Akta 400, dan klausa 2 perjanjian pinjaman wang tersebut, plaintif terus mengenakan faedah pada kadar 10% setahun ke atas jumlah prinsipal selepas daripada tarikh 16 Disember 2021 dan berterusan (lihat perenggan 47).

(3) Mahkamah mendapati bahawa, pertama, peruntukan formula berkanun untuk pengiraan faedah telah diperuntukkan dengan jelas dalam s 17(1) Akta 400 dan ia perlu dipatuhi. Kedua, faedah sebanyak 10% untuk lima bulan yang diperolehi oleh plaintif telah dikapitalisasikan, dan faedah ingkar sebanyak 8% setahun terakru atas jumlah terhutang yang meningkat. Ketiga, membenarkan faedah 10% setahun terus terakru ditambah faedah ingkar sebanyak 8% setahun yang dikenakan akan mengakibatkan defendan dikenakan faedah melebihi apa yang plaintif berhak terima yang melanggar formula berkanun yang diperuntukkan dalam s 17(1) Akta 400. Akhir sekali, yang juga sama penting, Akta 400 merupakan perundangan yang bermanfaat secara sosial untuk mengawal kadar faedah yang melampau dan jika terdapat apa-apa kekaburan dalam tafsiran s 17(1) Akta 400, ia perlu ditafsirkan memihak kepada peminjam dan secara lanjutan defendan yang telah memberikan cagaran untuk pinjaman yang diambil oleh peminjam utama, selaras dengan mukadimah Akta 400. Dengan kata lain, untuk melindungi mereka yang ingin dilindungi oleh Akta 400 (lihat perenggan 49).

(4) Berikutan itu, defendan telah membuktikan bahawa pemberian perintah jualan adalah bertentangan dengan beberapa peraturan undang-undang iaitu Akta 400, dan khususnya, s 17(1) Akta 400 yang berjumlah kepada sebab-sebab yang bertentangan di bawah s 256(3) KTN. Dengan mengira faedah mengikut cara yang dilakukan oleh plaintif, dalam undang-undang, defendan telah membuktikan bahawa terdapat sebab yang bertentangan di bawah dua daripada tiga kategori yang ditetapkan dalam *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77, iaitu: (a) bahawa tuntutan berkanun dalam Borang 16D menuntut jumlah

wang yang tidak sah daripada gadaian tersebut; dan (b) pemberian perintah jualan adalah bertentangan dengan beberapa peraturan undang-undang iaitu Akta 400, dan khususnya, s 17(1) Akta 400 (lihat perenggan 53).] A

Cases referred to B

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393; [1998] 2 CLJ 75, FC (refd)

Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor [2006] 2 MLJ 685; [2006] 3 CLJ 544, FC (distd) C

CIMB Islamic Bank Bhd v David Chua Kok Tee [2022] MLJU 537; [2022] CLJU 618, HC (distd)

Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor [2020] 5 MLJ 185; [2020] 9 CLJ 192, FC (refd)

Hap Seng Credit Sdn Bhd v Rentak Arena (M) Sdn Bhd [2017] 9 MLJ 169, HC (distd) D

Jigarlal K Doshi @ Jigarlal a/l Kantilal Doshi v Resolution Alliance Sdn Bhd and another appeal [2013] 3 MLJ 61; [2012] CLJU 811, CA (distd)

Low Lee Lian v Ban Hin Lee Bank Bhd [1997] 1 MLJ 77; [1997] 2 CLJ 36, SC (folld) E

Thameez Nisha Hasseem (as the administrator of the estate of Bee Fathima @ dll, deceased) v Maybank Allied Bank Bhd [2023] 4 MLJ 145; [2023] 5 CLJ 874, FC (refd)

Legislation referred to F

Moneylenders (Control and Licensing) Regulations 2003 reg 10(1), Schedule K

Moneylenders Act 1951 ss 17, 17(1), 17A(1), 19, 19(3), Part V

National Land Code ss 254, 254(1), 256, 256(3), 257, Form 16D

Rules of Court 2012 O 7 r 3, O 14 r 1, O 18 r 19(1)(a), (1)(b), (1)(c) (1)(d), O 83 G

Teoh Chye Yi (with Cheong Tick Soon) (Raja, Darryl & Loh) for the plaintiff.

Eldarius Yong Zhen Jie (with Felix Sam Sze Jia (pupil in chambers)) (Ting & Yong) for the defendant. H

Su Tiang Joo J:

A licensed moneylender's demand for an amount computed in breach of the statutory formula prescribed by s 17 of the Moneylenders Act 1951 (Revised 1989) amounts to a cause to the contrary so as to disentitle the moneylender to an order for sale of the property charged to the moneylender as security. I

A INTRODUCTION

[1] In seeking to enforce a third party charge over a piece of property, the plaintiff, a licensed moneylender, applied (encl 1) for an order for sale of the property alleging that the defendant/third party chargor, has failed to comply with its statutory demand for payment. The defendant applied to strike out the application (encl 5) asserting that it has raised a novel point which has not been decided before, namely that, the plaintiff's computation of the amount owing is in breach of the Moneylenders Act 1951 (Revised 1989) ('the MLA 1951') and this amounts to cause to the contrary as to disentitle the plaintiff to an order for sale.

[2] After hearing parties, this court found that the statutory demand made in Form 16D pursuant to s 254(1) of the National Land Code ('the NLC') was in contravention of s 17(1) of the MLA 1951 and, that this amounts to cause to the contrary pursuant to s 256(3) of the NLC, and had dismissed the application (encl 1) with costs and with liberty to the plaintiff to apply afresh premised upon the computation of the amount owing in accordance with the MLA 1951. Upon the dismissal of encl 1, the defendant withdrew encl 5 and it was struck out. Dissatisfied, the plaintiff has appealed, and these are the full grounds of judgment.

PARTIES

[3] The plaintiff is a licensed moneylender under the MLA 1951.

[4] The defendant is a private limited company with a company registration number No Syarikat: 198901009519 (186820-M).

BACKGROUND FACTS

[5] The plaintiff has given a loan ('the said loan') to a private company, Best Birdsnest Sdn Bhd ('principal borrower').

[6] The terms of the said loan are contained in a moneylending agreement carrying the title Schedule K of the Moneylenders Act 1951, Moneylenders (Control and Licensing) Regulations 2003 (sub-reg 10(1)), moneylending agreement (secured loan) made on 13 July 2021 (encl 2 pp 11 to 18) ('the said MLA').

[7] The material terms set out in the First Schedule to the said MLA (encl 2 p 15) are:

(a) the principal sum of the loan is RM24.5m ('the principal sum');

(b) interest rate is at 10%pa;

(c) duration of repayment of the loan is five months from the date of disbursement of the principal sum, which was *16 July 2021* (encl 2 para 6);

(d) repayment is to be via only one (single) instalment; and

(e) the principal sum and the total accrued interest or any balance thereof shall be repaid in full immediately UPON EXPIRY OF THE DURATION OF REPAYMENT and shall be repaid together with any charges that may be outstanding on the account.

[8] Clause 2 of the MLA (encl 2 p 11) provides that:

> (1) *If default is made* in the repayment upon the due date of any sum of instalment payable to the Lender under this Agreement, whether in respect of principal or interest, the *Lender shall be entitled to charge simple interest on the unpaid sum of instalment which shall be calculated at the rate of eight per centum per annum* from day to day from the date of default in repayment of the sum of instalment until that sum of instalment is paid, and any interest so charged shall not be reckoned for the purposes of this Agreement as part of the interest charged in respect of the loan.
>
> (2) The interest shall be calculated in accordance with the following formula:
>
> R = 8/100 x D/365x S
>
> where
>
> R represents sum of interest to be paid.
>
> D represents the number of days in default.
>
> S represents the sum of monthly instalment which is overdue.

[9] One of the securities given for the said loan is that the defendant has given a third party first legal charge under presentation of charge No PDSC 15537/2022 ('the said charge') over its land held under HS (D) 37724 PT 183 Seksyen 48 Bandar Kuala Lumpur, Daerah Kuala Lumpur ('the said land') valued at RM110,220,819 (encl 2 p 17).

[10] Both the plaintiff and the defendant agree in their respective affidavits filed, that the expiry of the duration of repayment was 16 December 2021 and that as at 16 December 2021, the amount owing is *RM25,526,986.30* (encl 2 para 8 and encl 6 para 11.4). This amount is made up of the principal sum plus interest thereon at 10%pa from 16 July 2021 until 16 December 2021.

[11] As it turned out, the principal borrower failed to repay the said loan by 16 December 2021 and continued to default in repayment despite repeated demands (encl 2 paras 8 and 9). This caused the plaintiff to sue the principal

borrower and its guarantors vide Kuala Lumpur High Court Civil Suit No WA-22NCC-183–04 of 2023 ('Suit 183').

[12] After the commencement of Suit 183, the principal borrower paid a sum of RM200,000 only which was utilised to pay part of the amount owing and as at 23 May 2023, the plaintiff asserts the amount owing is RM31,776,003.47 (encl 2 para 13).

[13] On 8 December 2023 the plaintiff obtained summary judgment in Suit 183 pursuant to O 14 r 1 of the Rules of Court 2012 ('the ROC') against the principal borrower and its guarantors as follows (encl 2 p 83):

(a) a sum of RM31,776,003.47 as at 23 May 2023;

(b) *interest on RM24.5m at 10%pa from 24 May 2023 until full realisation*;

(c) *interest on RM25,526,985.30 at 8%pa from 24 May 2023 until full realisation*; and

(d) costs of RM2,000 to be paid by the principal borrower and two of its guarantors and costs of RM1,000 to be paid by its third guarantor.

[14] Besides the summary judgment, the learned judge in Suit 183 had struck out the counterclaim of the principal borrower and its guarantors. The defendant in this action is not a party in Suit 183 and if the plaintiff had wanted for the defendant to be bound by it, it ought have added the defendant herein as a party to Suit 183, but it did not. See *Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor* [2020] 5 MLJ 185; [2020] 9 CLJ 192 at para 38.

[15] The judgment in Suit 183 remains unsatisfied, and I was informed by learned counsel for both the plaintiff and the defendant that there are pending appeals to the Court of Appeal against the judgment given in Suit 183.

ENFORCEMENT OF THE SAID CHARGE

[16] In addition to Suit 183, the plaintiff made demands through its solicitors vide letters dated 28 December 2022,21 March 2023 and 4 June 2024 upon the defendant to make payment, and asserting that as at 4 June 2024 the amount alleged to be owing is *RM36,435,437.07* (encl 2 para 16 and pp 88, 90–91 and 93–94).

[17] Not getting payment as demanded, the plaintiff issued a statutory demand in Form 16D pursuant to s 254 of the NLC. Section 254 of the NLC provides as follows:

(1) Where, in the case of any charge, any such breach of agreement as is mentioned

in subsection 253(1) has been continued for a period of at least one month or such alternative period as may be specified in the charge which shall not be less than one month, *the chargee may serve on the chargor a notice in Form 16D* —

(a) *specifying the breach in question*;

(b) *requiring it to be remedied within one month of the date on which the notice is served, or such alternative period as may be specified in the charge which shall not be less than one month; and*

(c) *warning the chargor that, if the notice is not complied with, he will take proceedings to obtain an order for sale*.

(2) Where, after the service of any such notice, the charged land or lease becomes vested in any other person or body, the notice shall be as valid and effectual against that person or body as it was against the person or body on whom it was served.

(3) If at the expiry of the period specified in any such notice the breach in question has not been remedied —

(a) the whole sum secured by the charge shall (if it has not already done so) become due and payable to the charge; and

(b) the chargee may apply for an order for sale in accordance with the following provisions of this Chapter:

Provided that paragraph (a) shall not apply to any charge to secure the payment of an annuity or other periodic sum.

[18] The Form 16D issued by the plaintiff dated 26 July 2024 and served upon the defendant in essence asserted that the defendant has committed a breach of the said charge by failing to pay on demand the principal sum and all monies including amongst other things, interest, commission, commitment fee, charges and costs outstanding or payable by the principal borrower and failing to comply with the aforesaid letters of demand of 28 December 2022, 21 March 2023 and 4 June 2024. *These letters of demand were annexed to the statutory demand in Form 16D* (encl 2 pp 96–108).

[19] Upon receipt of the Form 16D, the defendant wrote to the plaintiff's solicitors vide letter dated 13 August 2024 to refrain from applying for an order for sale pending the appeals against the judgment obtained in Suit 183 (encl 2 p 126). *The plaintiff disagreed and through its solicitors replied via its solicitors on 27 August 2024 that the pending appeals are irrelevant* (encl 2 p 128).

[20] The defendant wrote another letter dated 2 September 2024 to the plaintiff's solicitors asserting that the appeals are relevant to the plaintiff's enforcement of the said charge but if the plaintiff proceeds to file an application for an order for sale, it shall engage a legal counsel and take the necessary action (encl 2 p 127).

[21] On 24 September 2024, the plaintiff filed this action vide the originating summons (encl 1) pursuant to ss 256 and 257 of the NLC seeking an order for the sale of the said land via public auction to satisfy monies allegedly owing to the plaintiff under the said charge and various other consequential reliefs. In response, the defendant filed an application on 16 October 2024, to have the originating summons struck out pursuant to O 18 r 19(1)(a), (b), (c) and (d) of the ROC (encl 15).

PROCEDURAL CAUTION

[22] From my perusal of the affidavits affirmed for the plaintiff and the defendant for both encls 1 and 5, I found that the same materials are being relied upon by the plaintiff to seek an order for sale, and by defendant to both resist encl 1 and to have it struck out. I had, thus, at the first case management date of 17 October 2024 directed that both encls 1 and 5 are to be heard together.

[23] In my considered view, an originating summons for an order for sale is meant to be speedy and summary in nature, see *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77; [1997] 2 CLJ 36 (SC) at p 51 para a. Thus, there is no necessity to file an application to have it struck out when the same issues would be canvassed and if the defendant succeeds, the originating summons would be dismissed.

[24] To file a striking out application would merely duplicate efforts resulting in the court having to peruse and consider similar materials to determine similar issues. It is the flip side of the same coin. This is unproductive and is to be discouraged.

LAW ON THE ENFORCEMENT OF A CHARGE

[25] Section 256 of the NLC provides as follows:

(1) This section applies to land held under —

(a) Registry title;

(b) the form of qualified title corresponding to Registry title; or

(c) subsidiary title,

and to the whole of any undivided share in, or any lease of, any such land.

(2) Any application for an order for sale under this Chapter by a chargee of any such land or lease shall be made to the Court in accordance with the provisions in thatbehalfofanylaw for the time being in force relating to civil procedure.

(3) On any such application, the Court shall order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of cause to the contrary.

[26] It is undisputed that the said land is held under a Registry title and thus, pursuant to s 256(3) of the NLC this court shall order the sale of the said land to which the said charge relates *unless this court is satisfied of the existence of cause to the contrary*.

[27] What amounts to 'the existence of cause to the contrary' has been settled by the Supreme Court in *Low Lee Lian* where Gopal Sri Ram JCA (later FCJ) speaking for the Supreme Court held as follows:

> The critical phrase in sub-s (3) of s 256 to which we have lent emphasis, despite having been the subject of judicial pronouncements, continues to demand the attention of courts. There is no doubt that, upon a plain reading of the sub-section, a High Court is entitled to refuse an order for sale of charged property once it is satisfied of the existence of cause to the contrary. But the question then arises: what is meant by 'cause to the contrary'?
>
> *In our judgment, cause to the contrary within s 256(3) may be established only in three categories of cases*.
>
> *First, it may be taken as settled that a chargor who is able to bring his case within any of the exceptions to the indefeasibility doctrine housed in section 340 of the Code establishes cause to the contrary ...*
>
> ...
>
> *Secondly, a chargor may show cause to the contrary within s 256(3) of the Code by demonstrating that the chargee has failed to meet the conditions precedent for the making of an application for an order for sale. For example, failure on the part of the chargee to prove the making of a demand or service upon the chargor of a notice in Form 16D would constitute cause to the contrary. So too, where the notice demands sums not lawfully due from the chargee. See, Co-operative Central Bank Ltd v Meng Kuang Properties Bhd* [1991] 2 MLJ 283; [1991] 2 CLJ 1144. *However, in such a case, it would be open to the chargee to subsequently serve a notice or a proper notice (as the case may be) before commencing proceedings afresh as the cause shown to the contrary does not in substance affect the chargee's right to apply for an order for sale*.
>
> *Thirdly, a chargor may defeat an application for an order for sale bv demonstrating that its grant would be contrary to some rule of law or equity*.
>
> ...
>
> *A judge hearing an application under s 256 must bear in mind that the procedure under the section is meant to be speedy and summary in nature. He is first concerned with whether the chargee has given the appropriate statutory notices as stipulated in the Code. Next, he must ensure that the procedural requirements prescribed by O 83 of the Rules of the High Court 1980 have been complied with. Next, he is concerned with the very narrow question whether the material produced before him by the chargor constitutes cause to the contrary*.
>
> *In this last respect, if he is satisfied, on a careful and an objective assessment of the factual material made available to him, that the chargor has shown cause to the contrary in the sense we have discussed earlier in this judgment, he will refuse an order for sale. On the other hand, if he finds as a matter of law that the allegations raised by the chargor do not*

constitute cause to the contrary he will merely say so, giving his reasons, and grant the chargee's application.

...

Now, it is trite that a chargee/creditor may pursue any or all remedies to recover monies lent by him. He may enforce his statutory charge against the chargor by way of proceedings in rem under s 256 of the Code. He may sue the principal debtor (who may or may not be the chargor) upon the personal covenant contained in any loan agreement that was entered into between the parties. He may proceed against the surety who has guaranteed the loan. And he may pursue all of these courses simultaneously, contemporaneously or successively. See, China and South Sea Bank Ltd v Tan [1989] 3 All ER 839, *842*.

Thus, absent any special circumstances, a chargee who has obtained an order for sale is not barred by res judicata or any other form of estoppel from pursuing actions in personam against the chargor or the surety. The test of mutuality or reciprocity is, accordingly, not met. Consequently, no legitimate ground may be advanced to bar the chargor from mounting an action in personam against the chargee eg for breach of contract or for failure to furnish proper accounts.

APPEALS AGAINST JUDGMENT IN SUIT 183 IS IRRELEVANT

[28] Before I deal with the defendant's assertion that there is in existence cause to the contrary to defeat this action for an order for sale, from the aforesaid extracts of the Supreme Court judgment of *Low Lee Lian*, it is clear that the plaintiff may simultaneously pursue all remedies to recover monies lent by it. Thus, it follows that the plaintiff was correct when it asserts that Suit 183 and the appeals against the judgment it obtained in Suit 183 are irrelevant to this action. More so, as narrated above, when the defendant is not a party in Suit 183.

[29] It further follows that the application by the defendant to stay this action pending the disposal of the appeals against the judgment obtained in Suit 183 against the principal borrower and its guarantors, of which the defendant is not even a party, is without merit. In fact, with respect, for purposes of judicial management of time, it is in the interest of all relevant parties to the MLA that this action be disposed of expeditiously so that any appeal against any decision made herein can be taken together with those appeals against the decision in Suit 183, if deemed fit by the Court of Appeal.

[30] In any event, at the risk being repetitive, the Supreme Court in *Low Lee Lian*, had held that an application for an order for sale pursuant to s 256 of the NLC, is meant to be *speedy and summary in nature*. I am first to be concerned with whether the plaintiff has given the appropriate statutory notices as stipulated in the NLC. Next, I must ensure that the procedural requirements prescribed by O 83 of the ROC have been complied with. Next, I am to be concerned with the very narrow question whether the material produced

before me by the defendant constitutes cause to the contrary.

[31] Adopting the procedure laid down by the Supreme Court, I now consider whether the material produced before me constitutes cause to the contrary within any of the three categories of cases laid down by *Low Lee Lian*.

CONTENTIONS BY THE PARTIES

[32] The defendant had initially raised two procedural objections against the plaintiff's action for failure to comply with O 7 r 3 and O 83 of the ROC read together with s 256 of the NLC. The failure being the alleged omission by the plaintiff to give sufficient particulars to identify the cause of action (O 7 r 3 of the ROC) and the particulars of how the amount alleged to be due is made up (O 83). However, during the course of presenting his oral submissions, these procedural objections were not pursued by learned counsel for the defendant.

[33] On the merits of the action, both parties cited and relied on *Low Lee Lian* but made disparate averments concluding that this case supports their respective positions.

[34] The plaintiff asserts that with the principal borrower having failed to effect payment of the loan, it is entitled to enforce the said charge. It has issued notices of demand and the statutory notice in Form 16D for sums lawfully due to it but the defendant has failed to comply. It has complied with the procedural requirements under O 83 of the ROC by setting out the amount owing, and thus it ought to be granted an order for the sale of the said land with consequential reliefs to allow it to realise its security given by the defendant.

[35] The defendant, firstly asserts that the plaintiff has charged interest for a secured loan exceeding 12%pa (encl 6 para 11.2). This is contrary to s 17A(1) of the MLA 1951. When queried by me during the course of hearing on 23 April 2025 why such an assertion is made and to show the calculations, learned counsel for the defendant was not able to assist. Without the evidential basis to support such an assertion, no more need be said about this.

[36] As for the assertion that the defendant is not informed on how the amount owing is calculated, the defendant could have resorted to the provisions of s 19 of the MLA to seek the information. It is to be observed that pursuant to s 19(3) of the MLA, if the lender defaults in supplying the information when sought, the lender is not entitled to sue for the amount due and interest shall not chargeable during the period of default.

[37] Secondly, the defendant asserts that under the MLA the plaintiff is not allowed to charge interest beyond what is statutorily provided. It can only charge simple interest on any unpaid sum at 8%pa from day to day.

[38] Its main point is that the plaintiff can only impose interest at 10%pa on the principal sum of RM24.5m from 16 July 2021 until 16 December 2021. This comes up to RM1,026,986.30 and when this is added to the principal sum, the amount owing is RM25,526,986.30 ('the sum owing'). Thereafter, the plaintiff can only charge interest on the sum owing at 8%pa on a day to day basis. Computed in this manner until 15 March 2023, a period of 455 days, the interest comes to only RM2, 545,704.94 and when added to the sum owing, it comes to only RM28,072,691.20 and not RM31,126,800.83 as demanded by the plaintiff. Thus, the demand by the plaintiff is erroneous (encl 6 paras 11.3–11.8).

[39] The plaintiff disagreed and maintained that it can continue to charge interest on the principal sum at 10%pa even after 16 December 2021 (encl 8 para 11) and it has done so (encl 12 para 27). The plaintiff's director affirmed an affidavit to aver that the amount owing under the said charge has been taken from its books and records of the plaintiff kept in the ordinary course of business (encl 8 paras 16–17, encl 18 paras 6–8, encl 22 paras 6–8, encl 25 paras 6–8). It added that its computation has found favour in Suit 183 with judgment entered in its favour (encl 2 p 83).

[40] Reliance was further placed by the plaintiff on cl 22.1 of the MLA which provides that a statement duly signed by the director of the plaintiff shall be final and conclusive as to the amount due and owing from the defendant under the said charge and as to the rates of interest charged or to be become payable there on in any legal proceeding commenced under the said charge. The Federal Court case of *Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor* [2006] 2 MLJ 685; [2006] 3 CLJ 544 (FC) was cited in support of this assertion.

[41] Further reliance was placed by the plaintiff on the following cases for the principle that in foreclosure proceedings, challenges on the calculation of interest under the loan agreement are not relevant and reliance can be made on the latest statement of accounts of the plaintiff. See:

(a) *Jigarlal K Doshi @ Jigarlal a/l Kantilal Doshi v Resolution Alliance Sdn Bhd and another appeal* [2013] 3 MLJ 61; [2012] CLJU 811 (CA) held (2);

(b) *Hap Seng Credit Sdn Bhd v Rentak Arena (M) Sdn Bhd* [2017] 9 MLJ 169 (HC) held (1); and

(c) *CIMB Islamic Bank Bhd v David Chua Kok Tee* [2022] MLJU 537; [2022] CLJU 618 (HC) para 21.

COURT'S ANALYSIS AND FINDINGS

[42] The preamble to the MLA 1951 states that it is an Act for the regulation and control of the business of moneylending, *the protection of borrowers of the monies lent in the course of such business, and matters connected therewith*.

[43] The MLA 1951 is, thus, a special and specific Act of Parliament to regulate and control the business of moneylending not only for the protection of borrowers but also *matters connected therewith*. It contains six Parts with Part V containing specific provisions on the conduct of moneylending business including a specific provision housed in s 17 which makes it illegal for any moneylending agreement to provide directly or indirectly for the payment of compound interest. In my considered view, the phrase 'matters connected therewith' is wide enough to cover the dispute in this action on the calculation of interest payable under the said charge created in favour of the plaintiff to secure a moneylending loan in this action.

[44] The provisions of s 17(1) of the MLA 1951 provides the answer to the dispute in this case on how interest on the unpaid sum is to be calculated. It is reproduced below:

> (1) *Any moneylending agreement made on or after the commencement of this Act, for the loan of money by a licensee shall be illegal in so far as it provides, directly or indirectly*, for the payment of compound interest, or *for the rate or amount of interest to be increased by reason of any default in the payment of sums due under the moneylending agreement*:
>
> *Provided* that provision may be made in any such moneylending agreement that if default is made in the payment upon the due date of any sum or instalment payable to the licensee under the moneylending agreement, whether in respect of principal or interest, *the licensee shall be entitled to charge simple interest on the unpaid sum or instalment which shall be calculated at the rate of eight per centum per annum from day to day from the date of default in payment of the sum or instalment until that sum or instalment is paid, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.*
>
> (2) This section shall not apply to transactions known as Thavannai transactions, between one licensee and another licensee, provided that any such transaction is evidenced by a written document duly stamped.

[45] The proviso to s 17(1) of the MLA 1951 above makes it clear that the plaintiff shall be entitled to charge 8%pa on the unpaid sum or instalment ie the sum owing, which in this case, as at 16 December 2021 is RM25,526,986.30 which includes the interest at 10%pa on the principal sum of RM24.5m from 16 July 2021 until 16 December 2021 amounting to RM1,026,986.30. Even though this will amount to interest on interest ie compound interest, this is expressly permitted by the last part of the proviso

which provides that any interest so charged *shall not be reckoned* for the purposes of the MLA *as part of the interest charged in respect of the loan*. In other words, this portion of the interest charged up to the end of the five months tenure ie up to 16 December 2021 is capitalised.

[46] Clause 2 of the MLA itself provides that the lender, who is the plaintiff, shall be entitled to charge simple interest at the rate of 8%pa on *the unpaid sum of instalment*. The unpaid sum instalment has to be the principal sum of RM24.5m plus the interest thereon at 10%pa for the period of 16 July 2021 until 16 December 2021 payable in one single instalment. Thus, cl 2 of the MLA is has been crafted premised on s 17(1) of the MLA 1951. It has to, so as to comply with the law

[47] Clause 2 of the said MLA read together with s 17(1) of the MLA 1951, makes it clear that the cut-off date for the imposition of the interest at 10%pa on the principal sum or loan with a tenure of five months, is 16 December 2021. *However, in contravention of the explicit provision of s 17(1) of the MLA 1951, and cl 2 of the MLA, the plaintiff continued to charge interest at 10%pa on the principal sum after 16 December 2021 and continuing*. That this is how the plaintiff has calculated and demanded payment from the defendant is made clear by the table presented in the plaintiff's written submissions (encl 12 para 27) and which is reproduced below. I disagree with the plaintiff that it is entitled to levy interest as tabulated below:

Date	Days Elapsed	Interest of 10% per annum on principal sum	Interest of 8% on the arrears	Sums in arrears
15.12.2021	153 (16.07.2021-15.12.2021)	$RM24,500,000.00 \times \frac{10}{100} \times \frac{153}{365} = RM1,026,986.30$	-	**RM25,526,986.30**
23.05.2023	524 (16.12.2021-23.05.2023)	$RM24,500,000.00 \times \frac{10}{100} \times \frac{524}{365} = RM3,517,260.28$	$RM25,526,986.30 \times \frac{8}{100} \times \frac{524}{365} = RM2,931,756.89$	**RM31,776,003.47 (after taking into account part payment of RM200,000.00)**

[48] Learned counsel for the plaintiff had made available a copy of the grounds of judgment of the High Court in Suit 183 (encl 16 pp 29–40) which interpreted s 17(1) of the MLA 1951 and cl 2 in a manner allowing the plaintiff to continue to charge interest at 10% on the principal sum even after the five months' tenure of the loan. The reason given is that, if not, the principal

borrower would be put in a better position as it only has to pay 8%pa resulting in a 2%pa reduction. The High Court in Suit 183 allowed interest to be charged on the principal sum at 10%pa until full realisation plus another 8%pa default interest to be charged on the sum owing (encl 2 p 83). A

[49] With the greatest of respect, for the reasons, I have narrated above, I disagree. I add that firstly, the provisions of the statutory formula for the computation of interest is clearly provided in s 17(1) of the MLA 1951 and it has to be complied with. Secondly, the interest of 10% for the five months earned by the plaintiff has been capitalised, and the default interest of 8%pa accrues on the increased sum owing. Thirdly, to allow the 10%pa interest to continue to accrue plus a default interest of 8%pa being levied will result in the defendant being charged interest in excess of what the plaintiff is entitled to in contravention of the statutory formula provided in s 17(1) of the MLA. Lastly, but by no means the least, in my considered view, the MLA 1951 is a socially beneficent piece of legislation to keep in check usury and if there is any ambiguity in the construction of s 17(1) of the MLA 1951, it has to be construed in favour of the borrowers and by extension the defendant who has given a security for the loan taken by the principal borrower, in keeping with the preamble of the MLA. To put it another way, to protect those the MLA is meant to protect. B C D E

[50] With respect, reliance by the plaintiff on the conclusive evidence cl 22.1 of its MLA, and the Federal Court authority of *Cempaka Finance Bhd* is misplaced and without merit for the following reasons: F

(a) *Cempaka Finance Bhd* was not dealing with a loan granted under the MLA 1951 which specifically prohibits the imposition of interest in excess of what is statutorily provided for;

(b) the Federal Court in *Cempaka Finance Bhd* was not called upon to construe the statutory formula for the computation interest under the MLA 1951 as provided for in s 17(1) of the MLA 1951; G

(c) instead, *Cempaka Finance Bhd*, assists the defendant, as the Federal Court there held that a conclusive evidence clause operates in the field of adjectival law and *subject to manifest error*, it excuses the plaintiff from adducing proof of debt and shifts the burden onto the defendant to disprove the amount claimed (ibid at paras 6–7), and in this case, *there is manifest error* in the computation of the amount owing; and H

(d) not only is there manifest error in the instant case, the computation is one made in contravention of a substantive statutory provision of the MLA 1951 namely s 17(1) thereof, and it is well settled that even courts of unlimited jurisdiction have no authority to act in contravention of written law, see *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian* I

Finance Bhd [1998] 1 MLJ 393; [1998] 2 CLJ 75 (FC) as per Gopal Sri Ram JCA (later FCJ) at pp 424–426 (MLJ); at pp 112 paras f–h and 113 paras a–g (CLJ).

[51] For the same reasons, reliance by the plaintiff on the authorities of *Jigarlal K Doshi*, *Hap Seng Credit Sdn Bhd* and *CIMB Islamic Bank Berhad* are misconceived. I would add the following reasons:

(a) in *Jigarlal K Doshi*, the challenge by the chargor was not on the computation of the amount owing, but the delay in enforcing the charge some 15 years after default in the repayment of the loan, and it was held that, limitation only accrues from the date of the issuance of the Form 16D. However, this principle in *Jigarlal Doshi* has since been disapproved and overruled by *Thameez Nisha Hasseem (as the administrator of the estate of Bee Fathima @ dll, deceased) v Maybank Allied Bank Bhd* [2023] 4 MLJ 145; [2023] 5 CLJ 874 (FC) para 111. Counsel would do well to ensure that in the discharge of their duty to the court, they cite cases which sets out the current law;

(b) in any event, the Court of Appeal in *Jigarlal K Doshi* had followed *Low Lee Lian*, as it is obliged to under the doctrine of stare decisis, on the restrictive categories of cause to the contrary;

(c) whilst *Hap Seng Credit Sdn Bhd* involved the enforcement of a charge premised upon a moneylending agreement, the High Court held (ibid paras 33–36) that the defendant did not produce any evidence or proof to support its contention that the plaintiff had imposed excessive interest in breach of s 17(1) of the MLA 1951 unlike the instant case. Whilst reference is made to *Jigarlal K Doshi* in *Hap Seng Credit Sdn Bhd*, I observed that such reference was made at a time when *Thameez Nisha Hasseem* has yet to be decided by the Federal Court; and

(d) *CIMB Islamic Bank Berhad* did not deal with the enforcement of a charge action grounded on any breaches of the MLA 1951, and the High Court, in any event, held that the defendant was not able to prove any manifest error in the plaintiff's latest statement of account (ibid at para 24). This would lead to the irresistible conclusion that if manifest error had been proven like in the instance case, the High Court would have found cause to the contrary as to defeat the application for an order for sale.

NOVELTY OF ARGUMENT

[52] In *Hap Seng Credit Sdn Bhd*, the provisions of s 17(1) of the MLA 1951 was raised for consideration by Abu Bakar Jais J (now FCJ), but the defendant was not able to produce evidence that there was imposition of excessive interest and thus, the invocation of s 17(1) of the MLA 1951 in the instant case, is novel only to the extent that the defendant here has succeeded.

EXISTENCE OF CAUSE TO THE CONTRARY

[53] It follows that the defendant has proved that to grant an order for sale would be contrary to some rule of law namely the MLA 1951, and in particular, s 17(1) of the MLA 1951 which amounts to cause to the contrary under s 256(3) of the NLC. By computing interest in the manner it had, in law, the defendant has proved there is in existence cause to the contrary under two of the three categories laid down in *Low Lee Lian*, namely:

(a) that the statutory demand in Form 16D demands sums not lawfully due from the chargee; and

(b) to grant an order for sale would be contrary to some rule of law namely the MLA 1951, and in particular, s 17(1) of the MLA 1951.

[54] Wherefore, encl 1 is dismissed with costs with liberty to the plaintiff to apply afresh premised upon the computation of the amount owing in compliance with the provisions of the MLA 1951.

[55] Upon delivery of my decision to dismiss encl 1, learned counsel for the defendant conceded that encl 5 has thus been rendered academic and sought leave for it to be withdrawn. I had accordingly struck out encl 5.

COSTS

[56] Learned counsel for the defendant sought a sum of RM15,000 for costs with learned counsel offering a sum of RM3,000. Taking into account that encl 5 was in my considered view, unnecessary and had taken up needless time, that the subject matter involves the interpretation of a statutory formula on the computation of interest under the MLA 1951 which will have an important bearing on the amount owing which can be substantial, and with written submissions and oral submissions having been presented, I awarded a sum of RM12,000 subject to allocatur to be paid by the plaintiff to the defendant.

[57] Finally, I thank learned counsel for both the plaintiff and defendant for the submissions presented both in writing and orally and for the reasons given, I am of the view that the other authorities cited by them need not be considered.

Enclosure 1 dismissed with costs with liberty to plaintiff to apply afresh premised upon computation of amount owing in compliance with provisions of Act 400; encl

5 struck out; costs of RM12,000 awarded subject to allocatur to be paid by plaintiff to defendant.

Reported by Dzulqarnain Ab Fatar